

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

## EASTERN DIVISION

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FM HOLDINGS, LLC f/k/a	)	
FORWARDMARKET, LLC,	)	
	)	
Plaintiff,	)	Civ. No. 05-11400-MLW
v.	)	
	)	
BILL MAHONEY and	)	
STEPHEN GREGORIO,	)	
	)	
Defendants.	)	
	)	
	)	

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**PLAINTIFF'S STATUS REPORT AND APPLICATION  
TO ENFORCE SETTLEMENT AGREEMENT**

As reported in the parties' joint status report filed October 10, 2007, on October 3, 2007, the parties conducted a mediation before Dwight Golann, Esq. and agreed to a settlement of all claims in this action. The settlement was memorialized in a Memorandum of Agreement dated October 3, 2007, and signed by counsel for the parties in the presence of their respective clients and with the knowledge of AIG, the directors and officers liability insurance carrier for the defendants, which participated in the mediation. Plaintiff FM Holdings, LLC ("FM") is not attaching the Memorandum of Agreement because, at the request of the defendants, the parties agreed to keep the terms of the settlement confidential. Accordingly, FM is filing the accompanying motion to file the Memorandum of Agreement under seal. The Memorandum of Agreement reflects a complete, integrated agreement on all material terms of the settlement, including:

1. As previously reported, the parties agreed the defendants would pay FM a specified sum certain by November 1, 2007;
2. The parties agreed to exchange mutual releases and to file of stipulation of dismissal with prejudice upon the FM's receipt of the settlement payment from the defendants;
3. The parties agreed to a mutual non-disparagement provision; and
4. The parties agreed not to disclose the terms of the settlement to third parties.

There were no other material conditions to the consummation of the settlement. In particular, the settlement was not conditioned upon any further agreement between the defendants and AIG. It was agreed that defendants' counsel would draft a more formal settlement agreement including customary releases and the like.

After inquiries from FM's attorney, on October 31, 2007, counsel for the defendants, Timothy Blank, e-mailed a draft of a formal settlement agreement to counsel for FM, Sanford F. Remz, with the explanation that he was simultaneously circulating it to AIG. Attorney Remz made one minor change to the draft to conform to the Memorandum of Agreement, in order to clarify the timing of the filing of the stipulation of dismissal. Attorney Blank has expressed no issue with that one minor change. Kevin Swenke, the principal of FM, thereupon executed the more formal settlement agreement on November 1, 2007 and delivered the signature page to Attorney Remz. Attorney Remz then informed Attorney Blank that he was holding FM's signature page pending confirmation that the defendants were prepared to execute the agreement. (See e-mail dated November 1, 2007, attached as Exhibit B to the accompanying affidavit of Sanford F. Remz, Esq.) However, FM has never received such confirmation despite several requests made by counsel. The last that defendants' counsel informed Attorney Remz on November 27, 2007, was that defendants were still waiting for the approval from AIG to finalize

the agreement, as there were some issues as between the defendants and AIG that needed to be addressed.

FM respectfully requests that, unless a stipulation of dismissal is filed by December 11, 2007, the Court enter an Order enforcing the settlement agreement. There can be no dispute that the defendants unconditionally agreed to a settlement at the October 3, 2007 mediation in return for a dismissal of this action, the exchange of releases and a confidentiality provision, all of which FM has agreed to and performed as much as it has been able. Furthermore, FM requests that, if a stipulation of dismissal is not filed by December 11, 2007, it be awarded interest and attorneys fees for having to file this report and application, in light of the fact that it should have received the settlement payment by November 1, 2007, which would have obviated the need for this filing.

Plaintiff FM Holdings, LLC  
By its attorneys,

/s/ Sanford F. Remz  
Sanford F. Remz (BBO #538300)  
Kevin S. Murphy (BBO #638335)  
Yurko, Salvesen & Remz, P.C  
One Washington Mall, 11th Floor  
Boston, MA 02108  
(617) 723-6900

Date: November 27, 2007

**Certificate of Conference – Rule 7.1(A)(2) Statement**

The undersigned hereby certifies that on November 27, 2007, counsel for Plaintiff FM Holdings, LLC f/k/a/ Forwardmarket, LLC conferred with counsel for Defendant concerning this Motion.

/s/ Sanford F. Remz

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**Certificate of Service**

The undersigned hereby certifies that a copy of the above motion was caused to be served on all counsel of record via the ECF filing system and on all parties not represented by counsel by first class mail on November 27, 2007.

/s/ Sanford F. Remz

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